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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.06.2019

Pronounced on : 08.08.2019

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P(MD) No.12325 of 2017

and

WMP(MD)No.9490 of 2017

S.Leela Bai

.. petitioner

vs.

1.The Principal

District Institute of Education and Trainings,
Theroor @ Kulasekaranputhoor,
Kanyakumari District.

2.The Director,

State Council of Educational Research & Training,
College Road,
DPI Campus,
Chennai - 600 006.

3.The District Educational Officer,

Thuckalay,
Kanyakumari District.

4.The Director of School and Education,

College Road,
DPI Campus,
Chennai.

(R4 impleaded vide order dated 01.04.2019 made in WMP(MD)No.5005
of 2019) ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Certiorarified Mandamus calling for the records relating to the impugned order passed by the 3rd respondent in "O.MU.M.6107 A4/04" dated 29.09.2004 and 2nd respondent in Na.Ka.No.2445/A2/2016 dated 29.09.2016 and quash the same and there by direct the proposed 4th respondent to correct the petitioner's date of birth in school leaving certificate as per her birth certificate and the 2nd respondent to correct her date of birth in the petitioner's service register. [Prayer amended vide order dated 21.03.2019 made in WMP(MD)No.5236 of 2019]



For Petitioner : Mr.G.Cenil

For Respondents : Mrs.S.Srimathy
Special Government Pleader

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ORDER

This writ petition has been filed to quash the impugned orders of the third and second respondents in O.MU.M.6107 A4/04 dated 29.09.2004 and in Na.Ka.No.2445/A2/2016 dated 29.09.2016 respectively and consequently direct the fourth respondent to correct the petitioner's date of birth in the school leaving certificate as per her birth certificate and to direct the second respondent to correct the date of birth in the petitioner's service register.

2.The case of the petitioner, in brief, is as follows:

(i)The petitioner was appointed as a Lecturer in the District Institute of Education and Trainings at Theroor on 20.09.2000. As per the birth certificate, the date of birth of the petitioner is 03.07.1961. At the time of joining school, the date of birth of the petitioner was wrongly entered by the management as 25.05.1961 and based on the school leaving certificate, the date of birth of the petitioner was entered in the service register as 25.05.1961 and in order to correct the same, she made a representation dated 08.12.2003 to the first respondent, who, in turn, forwarded the same to the second respondent. The second respondent, by order dated 01.04.2004, directed the petitioner to make correction in the SSLC certificate and then submit a proposal for changing the date of birth in the service register. Based on the said order, the petitioner made a representation to the third respondent, seeking to correct her date of birth in the school certificate. The third respondent, by order dated 29.09.2004, rejected the claim of the petitioner stating that several years have been lapsed and therefore, it is not possible to correct the date of birth of the petitioner in the school certificate. Thereafter, the petitioner made a representation dated 28.01.2016 to the second respondent and the same was rejected by order dated 29.09.2016 stating that the claim was made after a lapse of five years from the date of entry into service. Challenging, the same the petitioner is before this Court with the aforesaid prayer.

3.The second respondent has filed a counter affidavit stating that the petitioner has joined duty on 20.09.2000 and based on the documents produced by her, her date of birth was entered in the service book as 25.05.1961. At the time of joining duty, she has not produced her SSLC certificate or the birth certificate of other family members to alter her date of birth. However, proper instructions have been given to the petitioner to make correction in



the SSLC Certificate and then to approach the authorities concerned to change the date of birth. But, the petitioner has not taken any steps to rectify the defects as directed and after a lapse of 13 years, she sent a representation to the second respondent on 28.01.2016 and the same was rightly rejected by the second respondent stating that the claim was made after a lapse of five years from the date of entry into service. Therefore, the impugned orders do not require any interference.

4.The learned counsel appearing for the petitioner submitted that the petitioner has joined in service on 20.09.2000 and she submitted a representation to the second respondent as early as on 08.12.2003, within a period of five years. But the second respondent, by order dated 01.04.2004, directed the petitioner to get the date of birth corrected in the school leaving certificate. Therefore, the petitioner made a representation to the third respondent, seeking to correct her date of birth in the school certificate. The third respondent, by order dated 29.09.2004, rejected the claim of the petitioner stating that after a lapse of several years the date of birth of the petitioner cannot be corrected in the school certificate. Thereafter, on 28.01.2016, the petitioner made a representation to the second respondent, but the same was also rejected by order dated 29.09.2016 on the ground that the claim was made after a lapse of several years, which is against Rule 49(c) of the State and Subordinate Services Rules, 1961. Therefore, the impugned orders of the respondents 3 and 2 are liable to be quashed and consequently the second respondent can be directed to correct the date of birth of the petitioner in the service register as per the birth certificate of the petitioner.

5.In view of the aforesaid facts and the materials on record, the petitioner has submitted the application on 08.12.2003 and the same was returned to rectify the defects pointed out by the respondents. But, the petitioner has not resubmitted the application by rectifying the defects and the petitioner, slept over the matter for nearly 13 years and made a representation on 28.01.2016, after a lapse of 13 years, seeking alteration of date of birth. Therefore, the respondents 2 and 3 have rightly rejected the claim of the petitioner by stating that the petitioner made such a representation to the authorities at the fag end of service career.

6.The Hon'ble Supreme Court, in the decision reported in **(1994) 6 Supreme Court Cases 302 [State of T.N. Vs. T.V.Venugopalan]** has stated that a Government servant would not be permitted to alter his date of birth in the service register at the fag end of his service. The relevant portion of the said judgment is extracted hereunder:

"7. As held by this Court in Harnam case, Rule 49 is to be harmoniously interpreted. The application for correction of the date of birth of an in-service employee should be made within five years from the date when the

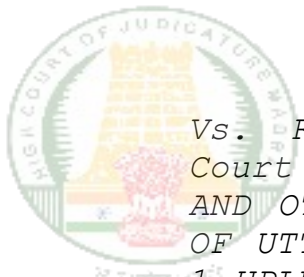


Rules had come into force, i.e., 1961. If no application is made, after expiry of five years, the government employee loses his right to make an application for correction of his date of birth. It is seen that the respondent entered into the service on 12-1-1952, and only when he was due for superannuation at the age of 58 years on 31-8-1991, he made the application exactly one year before his superannuation. The Government rejected his claim before he attained the age of superannuation on 30-8-1991. When questioned, the Tribunal, for incorrect reasons, set aside the order and remitted the matter for reconsideration. The Government considered various facts and circumstances in the GOMs No. 271 and rejected the claim on 31-3-1993. The evidence is not unimpeachable or irrefutable. The Tribunal in its judicial review is not justified in trenching into the field of appreciation of evidence and circumstances in its evaluation to reach a conclusion on merits as it is not a court of appeal. This Court has, repeatedly, been holding that the inordinate delay in making the application is itself a ground for rejecting the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for, gets expired. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground. The appeal is accordingly allowed with costs quantified as Rs.3000.

7. Following the same, this Court in the case of C. Elangovan Vs. The Director of School Education (W.P.No.18749 of 2006), decided on 18.07.2008, has held as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

"6. In U.P.MADHYAMIK SHIKSHA PARISHAD AND OTHERS



Vs. RAJ KUMAR AGNIHOTRI (2006-2-L.W.182), the Supreme Court relying on its earlier decisions in STATE OF U.P. AND OTHERS Vs. GULAICHI (SMT), ((2003) 6 SCC 483), STATE OF UTTARANCHAL AND OTHERS Vs. PITAMBER DUTT SEMWAL (2002) 1 UPLBEC 441 SC, STATE OF T.N. Vs. T.V.VENUGOPALAN (1994) 6 SCC 302=1994 WRIT L.R.831=1995-1-L.W.13 S.N., EXECUTIVE ENGINEER, BHADRAK (R&B) DIVISION, ORISSA AND OTHERS Vs. RANGADHAR MALLIK, 1993 SUPP (1) SCC 763, GOVERNMENT OF ANDHRA PRADESH AND ANOTHER Vs. M.HAYAGREEV SARMA ((1990) 2 SCC 682), UNION OF INDIA Vs. HARNAM SINGH, ((1993) 2 SCC 162), BURN STANDARD CO. LTD. AND OTHERS Vs. DINABANDHU MAJUMDAR AND ANOTHER (AIR 1995 SC 1499) and THE SECRETARY & COMMISSIONER HOME DEPARTMENT & ORS Vs. R.KIRUBAKARAN, (JT 1993 (5) SC 404), had come to the conclusion that the correction in entries made in the Government records, on the basis of which the Government servant got the service, cannot be allowed to be changed just a few years before retirement or at the fag end of his service.

8. At this juncture, it is relevant to point out Rule 49 of the Tamil Nadu State and Subordinate Service Rules, 1961, which speaks about 'Alteration of date of birth'. The same reads as follows:

"49. Alteration of date of birth -- (a) if, at the time of appointment, a candidate claims that his date of birth is different from that entered in his S.S.L.C or Matriculation Register or School records, he shall make an application to the Tamil Nadu Public Service Commission in cases where the appointment is made in consultation with the Commission and in other cases to the appointing authority stating the evidence on which he relies and explaining how the mistake occurred. The application shall be forwarded to the Commissioner of Revenue Administration for report after investigation by an officer not below the rank of a Deputy Collector and, on receipt of the report, the Tamil Nadu Public Service Commission or the appointing authority, as the case may be, shall decide whether the alteration of date of birth may be permitted or the application may be rejected:

Provided that in case of a candidate who was born outside the state of Tamil Nadu the investigation through the Commissioner of Revenue Administration shall be dispensed with and the Tamil Nadu Public Service Commission or the appointing authority, as the case may be, shall examine and scrutinize the records that may be by the candidate and shall decide whether the alteration of date of birth may be permitted or the application may be rejected.



(b) After a person has entered service, an application to alter the date of his birth as entered in the official records shall be entertained only if such an application is made within five years of such entry into service. Such an application shall be made to the authority competent to make an appointment to the post held by the applicant at the time of his application and shall be disposed of in accordance with the procedure laid down in sub-rule(a).

(c) Any application received after five years after entry into service or any application, which is not supported by entries in Secondary School Leaving Certificate, School, College or University records, birth extract from the records of local bodies or military discharge certificates, shall be summarily rejected."

9. In a catena of decisions, this Court as well as the Hon'ble Supreme Court, time and again, has reiterated the fact that if any application is received after five years from the entry into service, the same cannot be considered and the same will be rejected in terms of Rule 49(c) of the Tamil Nadu State and Subordinate Service Rules.

10. In the instant case on hand, the petitioner had entered into service on 20.09.2000 and she made a representation on 08.12.2003 to the first respondent within a period of five years, who forwarded the same to the second respondent. The second respondent, directed the petitioner to make correction in the SSLC certificate and thereafter resubmit the application within five years. But the petitioner has not taken steps to resubmit the application within five years and again made a representation dated 28.01.2016, after a lapse of 13 years and the same was rightly rejected by the third respondent on the ground that the writ petitioner made the claim after a lapse of five years from the date of entry into service. Further, no explanation has been given by the petitioner for the huge delay of 13 years in making the subsequent application.

11. The grievance of the petitioner to alter the date of birth wrongly entered in the service register, cannot be considered as per Rule 49(c) of the Tamil Nadu State and Subordinate Service Rules at the end of service. Thus, considering the facts and circumstances of the case and in the light of the decision cited supra, there is no illegality or infirmity in the impugned orders passed by the respondents 3 and 2 and this writ petition is liable to be dismissed.



12. In the result, this writ petition stands dismissed. No costs. Consequently, WMP(MD)No.9490 of 2017 is closed.

Sd/-

Assistant Registrar (P AND A)

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Sub Assistant Registrar(CS)

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To

1. The Principal

District Institute of Education and Trainings,
Theroor @ Kulasekaranputhooor,
Kanyakumari District.

2. The Director,

State Council of Educational Research & Training,
College Road, DPI Campus,
Chennai - 600 006.

3. The District Educational Officer,

Thuckalay, Kanyakumari District.

4. The Director of School and Education,

College Road, DPI Campus,
Chennai.

+1 CC to M/s.G.CENIL, Advocate (SR-80542[F] dated 08/08/2019)

W.P(MD) No.12325 of 2017

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